IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.137 of 2006
in
Notice of Motion No.2837 of 2005
in
Suit No. 2565 of 2005

Maharashtra Esters & Kestones P.Ltd. ....Appellants

Vs

M/s K.J.Vora & Co and Ors. ..Respondents

Mr K.R.Belosey instructed by Mr. Chandrakant N Chavan
for the appellants

Mr.P.K.Dhakephalkar, Senior Advocate, with Mr A.M.Rajabally
for the respondents.

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA, J.
DATE: JUNE 29, 2006.

P.C.:-

Heard the learned counsel for the parties. The appellants have challenged the order dated 30th September, 2005 passed by the learned single Judge in Notice of Motion No.2837 of 2005 in Suit No.2565 of 2005. Having perused the impugned order, it appears that the learned counsel for the appellants-plaintiffs did not press the notice of motion in view of the statement made by the learned counsel for the respondents-defendants. It is the

contention of the learned counsel for the appellants that the said statement was made due to wrong instructions. It appears, for clarification of the said order, the appellants, in fact, moved a praecipe dated 7th October, 2005 before the learned single Judge whereby the learned single Judge, vide his order dated 11th October, 2005, simply extended the time to remove the machinery by two more weeks, but without any clarification of the previous order. The said order was passed after notice to the appellants. In view of the aforesaid position, when the appellants did not press the notice of motion and permitted the respondents to obtain extension of time to carry out their obligation and has failed to obtain any clarification in respect of the order dated 30th September, 2005, we hardly see any merit in the appeal. The learned counsel for the appellants has invited our attention to the affidavit of L.Sameer Banerjee, Managing Director of the plaintiff company in order to explain the reason for not pressing the notice of motion and submitted that as it was a bonafide mistake, the matter be remitted back to the

learned single Judge for fresh decision. He also brought to our notice a decision of the Apex Court in the case of Central *Bank of India vs parallax purchasing Gandhi,* reported in (2003) 8 ILD 167 (SC). We have gone through the said decision and in our our opinion the said decision is of no assistance to the appellants. In any case we do not see any justifiable ground to remit the matter back to the learned single Judge as, in our view, no error whatsoever has been committed by the learned single Judge in passing the impugned order. The appeal is accordingly dismissed.

CHIEF JUSTICE

ABHAY.S.OKA, J.